and violence toward persons employed by plaintiff. *Held*, (1) While the first part of § 20 of the Clayton Act forbids an injunction to prevent peaceful persuasion by employees discharged or expectant in promotion of their side of the dispute it is merely declaratory of the common law, and all attempts at persuasion or communication which lead to intimidation and obstruction are not included within this section of the Clayton Act and will be restrained; (2) In order to prevent intimidation and violence defendants shall be entitled only to one representative for each point of ingress and egress in the plant for the purpose or observation, communication or persuasion, provided they be not abusive, libelous or threatening; and such representatives shall approach individuals singly and not together, "and shall not in their single efforts at communication or persuasion obstruct an unwilling listener by importunate following or dogging his steps." *American Steel Foundaries* v. *Tri-City Central Trades Council*, 42 Sup. Ct. Rep. 72 (1921).

The effect of the decision in this case, though the court carefully avoided using the words, is that it upholds the right of "Peaceful Picketing" in certain cases; that is, persuasion and communication may be used by the strikers, so long as such persuasion and communication do not amount to violence, intimidation and obstruction of the employer's business. But it must be clearly understood, as was pointed out by the court, that this decision applies only to the facts in the instant case and cannot be laid down as a rigid rule.

For a general discussion of the different views taken by the courts on this subject see 7 VA. LAW REV. 462.

INTOXICATING LIQUORS—WARRANTS OF SEARCH AND SEIZURE—LIQUORS CANNOT BE SEIZED WITHOUT WARRANT AND WHEN UNLAWFULLY SEIZED MUST BE RETURNED TO OWNER.—A person was seen by prohibition agents leaving the house of the petitioner. Upon searching and questioning him they were informed that the petitioner had sold him some liquor. Without obtaining a warrant for the search of a private dwelling as required by the National Prohibition Act, the agents entered the petitioner's house and seized the liquors found therein. There was nothing to indicate when the liquors were acquired. In a criminal prosecution a petition was made for the return of the liquors. *Held*, petition granted. *Connelly* v. *United States*, 275 Fed. 509 (1921).

The Fourth Amendment to the Federal Constitution was not the first move to crystallize those principles which secure individual rights against unreasonable searches and seizures. *Entick* v. *Carrington*, 19 Howell's State Trials, 1029 (1765); *Bill of Rights of Virginia*, § 10. See also *Boyd* v. *United States*, 116 U. S. 616 (1886). And it is to be observed that no power exists at common law to make a search and seizure without a warrant. *People* v. *Halveksz* (Mich.), 183 N. W. 752 (1921); *In re Swan*, 150 U. S. 637, 14 Sup. Ct. 225, 37 L. Ed. 1207 (1893). Except for the character of the documents seized, the law in cases of unlawful searches is now well settled. *Weeks* v. *United States*, 232 U. S. 383, L. R. A. 1915B, 834, Ann. Cas. 1915C, 1177 (1914); *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385 (1920).

It is to be noticed that if the seized property, although seized under an invalid warrant, could not possibly be lawfully in the possession of the accused, such as an illicit still or implements of crime, a return of such property will not be ordered. *United States* v. *Rykowski*, 267 Fed. 866 (1920); *Haywood* v. *United States*, 268 Fed. 795 (1920).

Section 2, title 2, of the Volstead Act (41 Stat. 305) provides that section 1014, Rev. St. U. S. (Comp. St. 1674), is made applicable to the enforcement of that Act, and that the officers mentioned in section 1014 are authorized to issue search warrants under the limitations provided in title 11 of the Act of June 15th, 1917 (40 Stat. 217 *et seq.*). A State statute making it mandatory upon a magistrate to issue a search warrant when a sworn complaint or affidavit charging the unlawful sale of liquors is presented to him is unconstitutional because it excludes the element of discretion in determining probable cause. *People* v. *Delamater* (Mich.), 182 N. W. 57 (1921). For the same reason a warrant issued upon a conclusion of the applicant, without any facts being stated in the application upon which the judicial officer to whom it is addressed may form his own conclusion as to probable cause, is invalid. *State* v. *District Court* (Mont.), 198 Pac. 362 (1921); *United States* v. *Rykowski*, *supra*. But see *contra*, *Rose* v. *State*, 171 Ind. 662, 87 N. E. 103, 17 Ann. Cas. 228 (1909); *Lowrey* v. *Gridley*, 30 Conn. 450 (1862). So, also, a warrant for the search of an apartment building without any evidence being presented to the commissioner that the premises are being used for the unlawful sale of liquor is invalid. *United States* v. *Mitchell*, 274 Fed. 128 (1921). Acts recited in a search warrant charging one with having in possession liquor in violation of both State law and city ordinance will support a search and seizure, although under the National Prohibition Act (section 25) such acts would be inadequate since no search warrant shall issue to search a private dwelling unless used for the unlawful sale of liquor. *United States* v. *Viess*, 273 Fed. 279 (1921); *United States* v. *Armstrong*, 275 Fed. 506 (1921).

In accordance with the strict rules for issuing search warrants it is held that a search warrant cannot be amended by a telephone communication from the commissioner who issued it. *United States* v. *Mitchell*, *supra*. Nor can an unlawful entry into a dwelling be legalized by a warrant issued upon information thereby secured. *United States* v. *Mitchell*, *supra*. Likewise, a search warrant or subpoena issued on information obtained at the time of a previous illegal search does not authorize the retention of documents seized at that time. *United States* v. *Kraus*, 270 Fed. 578 (1921); *Silverthorne Lumber Co.* v. *United States*, *supra*. That is, an unlawful search cannot be justified by what is found. *United States* v. *Slusser*, 270 Fed. 818 (1921).

The scope of the authority of the executing officer is to be defined by the terms of the warrant. For instance, it has been held that trespass *quare clausum fregit* may be maintained against an officer, who with a warrant to search a dwelling, searched the barn on the premises and seized the liquor stored therein. *Jones* v. *Fletcher*, 41 Me. 254 (1856). As to the recovery of damages for the unlawful execution of a warrant, see 6 VA. LAW REV. 599. And a warrant to search certain premises

does not authorize the officer to search a person not described in the affidavit who is casually on the premises. *Purkey* v. *Mabey* (Idaho), 193 Pac. 79 (1920). The constitutional right to be protected against an unlawful search and seizure extends even to a corporation. *Silverthorne Lumber Co.* v. *United States, supra.* It covers also the garage on the premises of the accused. *United States* v. *Slusser, supra.* A private dwelling does not lose its character as such, and become a distillery, because upon a search a still is found in operation upon the premises. *United States* v. *Kelih*, 272 Fed. 484 (1921). Since the making of the return of the warrant is merely a ministerial act, the failure of the officer to whom a search warrant is directed to make a return thereof cannot invalidate the search or seizure made under the warrant. *Rose* v. *United States*, 274 Fed. 245 (1921). Nor under the Volstead Act does it invalidate the warrant. *United States* v. *Kraus, supra.*

As to seizure without a warrant the National Prohibition Act provides that an officer is not justified in seizing intoxicating liquor or other property without a search warrant, except as provided in section 26 of that Act, which requires him to seize all intoxicating liquors being transported contrary to law. *United States* v. *Crossen*, 264 Fed. 459 (1920). On the grounds that an officer may avert a criminal act in the process of commission before him, it is held that an officer whose sense of smell informs him that the law is being violated may, without a warrant, enter a nearby house and arrest the persons found there conducting an illicit still and seize the apparatus so used. *United States* v. *Borkowski*, 268 Fed. 408 (1920). The correctness of this holding is to be doubted, and its dangerous tendency deprecated.

It is interesting to note in this connection that the so-called Stanley amendment to the National Prohibition Act, approved by the President on Nov. 23, 1921, provides that any federal prohibition agent who shall search any private dwelling without a search warrant, or who shall without a search warrant maliciously and without reasonable cause search any other building or property, shall be guilty of a misdemeanor and liable to a fine. And any person who shall impersonate a federal agent and shall arrest or detain any person, or in any manner search the person, building, or other property of any person, shall be guilty of a misdemeanor and liable to a fine or imprisonment, or both.

INSURANCE—OPTION TO ANOTHER TO PURCHASE REAL PROPERTY DOES NOT PASS TITLE TO SUCH PROPERTY SO AS TO AVOID INSURANCE POLICY THEREON. —Plaintiff, who was the owner of a certain residence, insured it with defendant company. Later, plaintiff made an executory contract for the sale of the property to a third person. Plaintiff claimed this contract was only an option, and the trial judge, sitting as chancellor, reformed and found the alleged contract to be an option only. The third person never exercised this option, but cancelled and returned the written contract to the plaintiff. Later the insured residence burned, and plaintiff sought to collect the insurance. Defendant refused payment on the ground that plaintiff had divested himself of all insurable interest in the property, and was not entitled to collect the insurance, under the